

CHANGE REQUEST COVER SHEET

Change Request Number: 12-12

Date Received: 11/17/2011

Title: Iran Sanctions Act - Guidance Change

Name: Tim Eckert

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Policy OR Guidance: Guidance

Section/Text Location Affected: T3.6.4.A.8

Summary of Change: Change to Iran Sanctions Act guidance to require contractors to also certify that they have not exported sensitive technology to Iran.

Reason for Change: Consistency with the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010

Development, Review, and/or Concurrence: Acquisition Policy Division; Procurement Legal, and Contracting Offices at Headquarters, Centers, and Service Areas.

Target Audience: FAA Acquisition Workforce and Program Offices

Potential Links within FAST for the Change: None

Briefing Planned: No

ASAG Responsibilities: None

Potential Links within FAST for the Change: None

Links for New/Modified Forms (or) Documents (LINK 1) [null](#)

Links for New/Modified Forms (or) Documents (LINK 2) [null](#)

Links for New/Modified Forms (or) Documents (LINK 3) [null](#)

SECTIONS EDITED:

Procurement Guidance:

T3.6.4 Foreign Acquisition

Foreign Acquisition

Section 8 : Prohibition on Contracting with Entities that Engage in Certain Activities Relating to Iran [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

SECTIONS EDITED:

Section 8 : Prohibition on Contracting with Entities that Engage in Certain Activities Relating to Iran

Old Content: Procurement Guidance:

T3.6.4 Foreign Acquisition

Foreign Acquisition

Section 8 : Prohibition on Contracting with Entities that Engage in Certain Activities Relating to Iran

a. *Certification.*

(1) As required by the Iran Sanctions Act, unless an exception applies or a waiver is granted according to paragraph (c) or (d) of this section, each offeror must certify that the offeror, and any other person owned or controlled by the offeror, does not engage in any activity for which sanctions may be imposed under section 5 of the Iran Sanctions Act.

(2) In general, the following, which are described in detail in section 5 of the Iran Sanctions Act, are activities for which sanctions may be imposed on or after July 1, 2010:

(a) Knowingly making an investment of \$20,000,000 or more, or a combination of investments of \$5,000,000 or more that equal or exceed \$20,000,000 in a 12-month period, that directly and significantly contribute to the enhancement of Iran's ability to develop petroleum resources.

(b) Knowingly selling, leasing or providing to Iran goods, services, technology, information, or support with a fair market value of \$1,000,000 or more, or during a 12-month period with an aggregate fair market value of \$5,000,000 or more, that could directly and significantly facilitate the maintenance or expansion of Iran's domestic production of refined petroleum products, including any direct and significant assistance with respect to the construction, modernization, and repair of petroleum refineries.

(c) Knowingly selling or providing to Iran refined petroleum products with a fair market value of \$1,000,000 or more, or during a 12-month period with an aggregate fair market value of \$5,000,000 or more.

(d) Knowingly selling, leasing, or providing to Iran goods, services, technology, information, or support with a fair market value of \$1,000,000 or more, or during a 12-month period with an aggregate fair market value of \$5,000,000 or more, that could directly and significantly contribute to the enhancement of Iran's ability to import refined petroleum products, including:

(i) Certain insurance or reinsurance, underwriting, financing, or brokering for the sale, lease or provision of such items; or

(ii) Providing ships or shipping services to deliver refined petroleum products to Iran.

(e) Exporting, transferring, or otherwise providing to Iran any goods, services, technology, or other items knowing that it would contribute materially to the ability of Iran to acquire or develop chemical, biological, or nuclear weapons or related technologies, or develop destabilizing numbers and types of advanced conventional weapons.

b. *Remedies.* Upon determining a false certification under paragraph (a) of this section, FAA will take one or more of the following actions:

(1) The CO may terminate the contract.

(2) The suspending official may suspend the contractor according to the procedures in AMS Procurement Guidance T3.2.2.7.

(3) The debaring official may debar the contractor for a period not to exceed three years according to the procedures in AMS Procurement Guidance T3.2.2.7.

c. *Exception for trade agreements.* The certification requirements of paragraph (a) of this section do not apply to procuring eligible products, as defined in the NAFTA Implementation Act (Pub. L. 103-182, 107 Stat 2057) or the Agreement on Civil Aircraft (19 U.S.C. 2513) (see AMS Procurement Guidance T3.6.4).

d. *Waiver.*

(1) The President may waive the requirement for certification on a case-by-case basis if the President determines and certifies in writing to the appropriate congressional committees (Committee on Armed Services of the Senate, Committee on Finance of the Senate, Committee on Banking, Housing, and Urban Affairs of the Senate, Committee on Foreign Relations of the Senate, Committee on Armed Services of the House of Representatives, Committee on Ways and Means of the House of Representatives, Committee on Financial Services of the House of Representatives, and Committee on Foreign Services of the House of Representatives) that it is in the national interest to do so.

(2) If FAA or a contractor seeks a waiver of the requirement, it must submit the request through the Office of Federal Procurement Policy (OFPP), allowing sufficient time for review and approval. Upon receipt of the waiver request, OFPP will consult with the President's National Security Council, the Office of Terrorism and Financial Intelligence in the Department of the Treasury, and the Office of Terrorism Finance and Economic Sanctions Policy, Bureau of Economic, Energy, and Business Affairs in the State Department, allowing sufficient time for review and approval.

(3) In general, all waiver requests should include the following information:

(a) Agency name, complete mailing address, and point of contact name, telephone number, and email address.

(b) Offeror's name, complete mailing address, and point of contact name.

(c) Description/nature of product or service.

(d) The total cost and length of the contract.

(e) Justification with market research demonstrating that no other offeror can provide the product or service and stating why the product or service must be procured from this offeror, as well as why it is in the national interest for the President to waive the prohibition on contracting with this offeror that conducts activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act of 1996.

(f) Documentation regarding this offeror's past performance and integrity (see the Past Performance Information Retrieval System at www.ppirs.gov and any other relevant information).

(g) Information regarding the offeror's relationship or connection with other firms that conduct activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act of 1996.

(h) The activities in which the offeror is engaged for which sanctions may be imposed under section 5 of the Iran Sanctions Act of 1996.

e. *Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, Section 106.* The head of an executive agency may not enter into or extend a contract for the procurement of goods and services with a person that exports certain sensitive technology to Iran, as determined by the President and listed on the Excluded Parties List System at <https://www.epls.gov>.

New Content: Procurement Guidance:

T3.6.4 Foreign Acquisition

Foreign Acquisition

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Section 8 : Prohibition on Contracting with Entities that Engage in Certain Activities Relating to Iran

a. Certification.

(1) As required by the Iran Sanctions Act of 1996 and the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010, unless an exception applies or a waiver is granted according to paragraph (c) or (d) of this section, each offeror must certify that the offeror, and any other person owned or controlled by the offeror, does not engage in any activity for which sanctions may be imposed under section 5 of the Iran Sanctions Act.

(2) In general, the following, which are described in detail in section 5 of the Iran Sanctions Act and section 106 of the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010, are activities for which sanctions may be imposed on or after July 1, 2010:

(a) Knowingly making an investment of \$20,000,000 or more, or a combination of investments of \$5,000,000 or more that equal or exceed \$20,000,000 in a 12-month period, that directly and significantly contribute to the enhancement of Iran's ability to develop petroleum resources.

(b) Knowingly selling, leasing or providing to Iran goods, services, technology, information, or support with a fair market value of \$1,000,000 or more, or during a 12-month period with an aggregate fair market value of \$5,000,000 or more, that could directly and significantly facilitate the maintenance or expansion of Iran's domestic production of refined petroleum products, including any direct and significant assistance with respect to the construction, modernization, and repair of petroleum refineries.

(c) Knowingly selling or providing to Iran refined petroleum products with a fair market value of \$1,000,000 or more, or during a 12-month period with an aggregate fair market value of \$5,000,000 or more.

(d) Knowingly selling, leasing, or providing to Iran goods, services, technology, information, or support with a fair market value of \$1,000,000 or more, or during a 12-month period with an aggregate fair market value of \$5,000,000 or more, that could directly and significantly contribute to the enhancement of Iran's ability to import refined petroleum products, including:

(i) Certain insurance or reinsurance, underwriting, financing, or brokering for the sale, lease or provision of such items; or

(ii) Providing ships or shipping services to deliver refined petroleum products to Iran.

(e) Exporting, transferring, or otherwise providing to Iran any goods, services, technology, or other items knowing that it would contribute materially to the ability of Iran to acquire or develop chemical, biological, or nuclear weapons or related technologies, or develop destabilizing numbers and types of advanced conventional weapons.

(f) Exporting sensitive technology to the Government of Iran or to any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran.

b. *Remedies.* Upon determining a false certification under paragraph (a) of this section, FAA will take one or more of the following actions:

(1) The CO may terminate the contract.

(2) The suspending official may suspend the contractor according to the procedures in AMS Procurement Guidance T3.2.2.7.

(3) The debaring official may debar the contractor for a period not to exceed three years according to the procedures in AMS Procurement Guidance T3.2.2.7.

c. *Exception for trade agreements.* The certification requirements of paragraph (a) of this section do not apply to procuring eligible products, as defined in the NAFTA Implementation Act (Pub. L. 103-182, 107 Stat 2057) or the Agreement on Civil Aircraft (19 U.S.C. 2513) (see AMS Procurement Guidance T3.6.4).

d. *Waiver.*

(1) The President may waive the requirement for certification on a case-by-case basis if the President determines and certifies in writing to the appropriate congressional committees (Committee on Armed Services of the Senate, Committee on Finance of the Senate, Committee on Banking, Housing, and Urban Affairs of the Senate, Committee on Foreign Relations of the Senate, Committee on Armed Services of the House of Representatives, Committee on Ways and Means of the House of Representatives, Committee on Financial Services of the House of Representatives, and Committee on Foreign Services of the House of Representatives) that it is in the national interest to do so.

(2) If FAA or a contractor seeks a waiver of the requirement, it must submit the request through the Office of Federal Procurement Policy (OFPP), allowing sufficient time for review and approval. Upon receipt of the waiver request, OFPP will consult with the President's National Security Council, the Office of Terrorism and Financial Intelligence in the Department of the Treasury, and the Office of Terrorism Finance and Economic Sanctions Policy, Bureau of Economic, Energy, and Business Affairs in the State Department, allowing sufficient time for review and approval.

(3) In general, all waiver requests should include the following information:

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(c) Description/nature of product or service.

(d) The total cost and length of the contract.

(e) Justification with market research demonstrating that no other offeror can provide the product or service and stating why the product or service must be procured from this offeror, as well as why it is in the national interest for the President to waive the prohibition on contracting with this offeror that-

(1) Conducts activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act of 1996; or

(2) Exports sensitive technology to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf of or at the direction of the government of Iran.

(f) Documentation regarding this offeror's past performance and integrity (see the Past Performance Information Retrieval System and any other relevant information).

(g) Information regarding the offeror's relationship or connection with other firms that conduct activities as specified under subparagraph d(3)(e) above.

(h) The activities in which the offeror is engaged as specified in subparagraph d.(3)(e) above.

e. Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, Section 106. The head of an executive agency may not enter into or extend a contract for the procurement of goods and services with a person that exports certain sensitive technology to Iran, as determined by the President and listed on the Excluded Parties List System.

Red Line Content: Procurement Guidance:

T3.6.4 Foreign Acquisition

Foreign Acquisition

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(g) Information regarding the offeror's relationship or connection with other firms that conduct activities ~~for which sanctions may be~~ as imposed specified under ~~section 5 of the Iran Sanctions Act~~ subparagraph of d(3)(e) 1996 above.

(h) The activities in which the offeror is engaged ~~for which sanctions may be imposed under section 5 of the~~ as Iran Sanctions Act specified in subparagraph of d.(3)(e) 1996 above.

e. *Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, Section 106.* The head of an executive agency may not enter into or extend a contract for the procurement of goods and services with a person that exports certain sensitive technology to Iran, as determined by the President and listed on the Excluded Parties List System at <https://www.epls.gov>.
